THE HIGH COURTS OF UTTARANCHAL AT NAINITAL
A.O. No. 904 of 2001
Old F.A.F.O.No. 299 of 1983

U.P.State Bridge Corporation Ltd.,
16 Madan Mohan Malviya Marg, Lucknow
through its Managing Director.

… Appellant.

Versus

1. Smt. Veena Agarwal, widow of late Sri S.C.Agrawal, Resident of House No. 64, Opposite Veterinary Hospital, Suraj Kund Road, Meerut City.
2. Km. Ichha, aged about 5 years (minor) Daughter of late Sri S.C.Agarwal R/O House No.64, Opposite Veterinary Hospital, Suraj Kund Road, Meerut City, under the Guardianshipof her mother and natural guardian, Smt. Veena Agrawal. (Claimants)
3. The Oriental Fire and General Insurance Company Ltd., Jawalapur, Saharanpur.
4. Sri Shiv Narain, son of Sri Lochan Singh, Driver, U.P.State Bridge Corporation Ltd., Unit No.1, Hardwar District Saharanpur.

… Respondents

Sri Ganesh Kandpal, learned Counsel for the appellant.
Sri T.A.Khan, Advocate, Leaned Counsel for the respondent No.3-Insurance Co.

Date May 12, 2006.
P.C. : Hon. B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 ***(for short the Act)*** is directed against the judgment and award dated 31-01-1983, passed by the Motor Accident Claims Tribunal Tehri Garhwal ***(in short the Tribunal)*** in Motor Accident Claim Petition No. 7 of 1981, Smt. Veena Agrawal and another Vs. U.P.State Bridge Corporation Ltd. and others, whereby compensation of Rs. 69,580/- along with interest @ 6% per annum has been awarded in favour of the claimants as against the appellant and Shiv Narain.

At the out set it may be mentioned that the learned Tribunal by the impugned judgment and award has decided three claim petitions bearing M.A.C. Petition No.7 of 1981, M.A.C. Petition No. 8 of 1981 and M.A.C. No. 9 of 1981 by a common

judgment, which had arisen out of the same motor accident. It may be added that this Court vide judgment dated 19-4-2006 had decided the A.O. No. 905 of 2001 arising out of M.A.C. Petition No. 9 of 1981, U.P.State Bridge Corporation Vs. Smt. Vimla Devi and others, which was dismissed on merits.

Relevant facts are that S.C.Agrawal, Assistant Engineer by profession, aged about 28 years and earning Rs. 1426/ per month lost his life besides some other persons, in a motor vehicle accident, which occurred on 12.4.1981 at 5:30 p.m. at Tehri. It is alleged that the deceased was traveling by Jeep No. UTD-4270 belonging to the appellant and it was insured with the respondent no.3. The accident occurred due to rash and negligent driving by the driver of the said Jeep with the result the deceased grievous injuries and died on the spot. The claimants are dependents and legal heirs of the deceased and they have claimed compensation of Rs. 5,00,000/- on different heads.

The claim petition was contested by the opposite party-appellant by filing its written statement on the ground that the deceased was working with the contractor Sri V.P.Goyal. It was asserted that the jeep in question was being driven by S.C.Agarwal, A.E. and not by the driver, Shiv Narain, hence the claim petition was not maintainable against the appellant. It was also pleaded that the jeep was insured with the O.P. No.2, which is liable to pay the compensation if any.

The insurer of the vehicle filed its written statement alleging therein that the jeep was not being driven by its driver and the person, who was driving the vehicle was not having a valid driving licence. It was stated that at the time of accident, the jeep was overloaded with 10 passengers against the prescribed limit of 5 persons against the terms of the policy conditions.

The O.P. No. 3 Shiv Narain took the similar stand as taken by the O.P.No. 1 –appellant.

On the pleadings of the parties, the learned Tribunal framed as many as eight issues in the case. After recording the evidence of the parties and perusing the same, the learned Tribunal came to the conclusion that the driver Shiv Narain was driving the ill-fated jeep at the relevant time and not S.C.Agrawal. It was further held that the driver of the jeep was rash and negligent in driving the jeep. It was further held that the driver Shiv Narain was having a valid driving licence at the time of accident. The Tribunal also came to the conclusion that since the jeep was being driven by driver Shiv Narain, therefore, the issue does not arise whether S.C.Agrawal was having a valid driving licence. The Tribunal found that the passengers traveling the in the jeep were gratuitous passengers and consequently the Insurance Company was not liable to pay any compensation. It was found that the claim petition was maintainable against the O.P. No.1 –appellant. The Tribunal further held that S.C.Agrawal was a gratuitous passenger. Ultimately the claim petition was decreed for compensation of Rs. 1,68,000/- against the appellant and driver alone. Aggrieved by the impugned award dated 31.01.1983, the appellant has come up in the appeal.

In this appeal, the impugned award has been assailed mainly on the ground that the finding of the Tribunal that Shiv Narain, the driver, was driving the jeep at the time of accident and that he was rash and negligent is not based on evidence on record. It was also contended that the Jeep was duly insured with the O.P.No.2 Oriental Fire and General Insurance Company, therefore, the Insurance Company is liable for compensation.

I have heard Sri Ganesh Kandpal, learned counsel for the appellant and Sri T.A. Khan, leaned counsel for the Insurance Company.

In the course of arguments, learned counsel for the Insurance Company, Sri T.A. Khan, submitted that since A.O. No. 905 of 2001 preferred by the appellant arising out of the same accident has already been decided by this court on merit and the appeal has been dismissed on merit, therefore, this appeal may also be decided in terms of the earlier judgment of this Court dated 19-4-2006 as the facts of the present case are identical and the case is squarely covered by the judgment. Learned counsel for the appellant has fairly conceded to this fact.

I have perused the earlier judgment dated 19-4-2006 passed by this Court and it reveals that the controversy involved in the present appeal has already been resolved by that judgment, as conceded by the learned counsel for the parties. Therefore, this appeal is liable to the dismissed on merit in terms of the judgment passed in A.O. No. 905 of 2001, U.P.State Bride Corporation Vs. Smt. Vimla Devi and others, decided on 19-4-2006.

In view of above, this appeal preferred by the appellant is dismissed on merit in terms of the judgment dated 19-4-2006 passed by this Court in A.O. No. 905 of 2001, U.P. State Bridge Corporation Vs. Smt. Vimla Devi and others. No order as to costs.

The amount in deposit with this Court, if any, be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant-respondents.

(B.S. Verma, J.)

RCP